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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Policies and Rules Concerning)
Toll Fraud)

CC Docket No. 93-292

REPLY COMMENTS OF THE INTERNATIONAL COMMUNICATIONS ASSOCIATION

The International Communications Association (ICA) hereby submits its reply comments concerning the Notice of Proposed Rulemaking released December 2, 1993 (FCC 93-496). ICA submitted initial comments in this proceeding and has reviewed many of the approximately 1,000 pages of comments submitted by other parties.

ICA believes that the other comments submitted last month in this proceeding are notable in two respects. First, a large number of parties who do not normally comment upon common carrier matters before the Commission submitted initial comments on the Notice. These comments represent a wide spectrum of commercial and non-commercial interests. Almost universally, these parties underscore the problems that are created by telecommunications fraud and implore the Commission to act to address the problems. Identical sentiments are echoed by important and long-standing representatives of ratepayer interests like the Ad Hoc Telecommunications Users Committee, the Tele-Communications Association (TCA), groups representing the banking, securities,

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airline, petroleum, electrical utility industries, as well as governments, educational institutions and other associations. These commenters support the Commission's tentative conclusions that it should act on several fronts to control telecommunications fraud. That the broadest possible spectrum of ratepayer interests agree on these points is more than adequate evidence of the essential correctness of the proposals in the Notice.

Second, Many common carriers, save some exceptions discussed below, entreat the Commission to maintain the archaic general rule that artificially forecloses carriers' liability for fraudulent use of their services. Some of these putatively "competitive" carriers seem to be unwilling to have the Commission develop rules that better reflect the operation of competitive markets--rules that would place the risk of losses from telecommunications fraud in proportion to the responsibility for avoiding such losses.

That seemingly competitive providers would wish to perpetuate these governmental protections against their normal market liability is no surprise. ICA disagrees with commenters like AT&T who assert that telecommunications fraud problems are under control. In fact, the volume of comments to the contrary is far more persuasive, as noted above.

ICA believes that its initial comments struck the correct balance between these two opposing points of view. We outlined the correct approach to telecommunications fraud, particularly fraud committed by mis-use of PBX, voice mail and other

equipment. ICA supported the creation of a federal advisory committee of limited duration to improve communication and education about all types of telecommunications fraud and to resolve, informally as many of the current serious problems as possible. Most other parties agree that such a committee is a good idea. Likewise, most parties agree that legislation enabling more effective law enforcement activities should be supported by the Commission.

ICA also proposed that a new system of fraud liability should be instituted by the Commission, based upon five points:

1. The Commission should require carriers to tariff similar regulations governing the responsibilities of customers and equipment providers and the carriers themselves when equipment-related telecommunications fraud has occurred. Contrary to the claims of several carriers, this requirement would not involve the Commission in a fixed "assignment" of liability or impose "default" liability on carriers. What it would do is inform all parties that users will no longer be automatically liable for telecommunications fraud unless their vendors had fully complied with the vendors' designated responsibilities.
2. Responsibility should reflect the reasonableness of equipment providers' techniques for preventing fraud or alerting users to likely fraud, and compliance with the proposed amendment to Section 68.200(1) of the Commission's Rules. Other rule changes, including the proposed revisions to the Part 22 rules discussed in Bell Atlantic's comments, should also be adopted as soon as possible. It would not be appropriate, however, to adopt interpretations of the proposed rules that would narrow their application as AT&T suggests at pp. 5-8 of its comments.
3. The customer must have made reasonable efforts to implement the equipment provider's warnings and instructions, to educate and to act upon evidence of potential fraud. The steps that the user should take are well-summarized in TCA's initial comments at page 8.

4. The carrier whose network services were used to commit the fraud must have had reasonable procedures in place to identify potential fraud and alert customers. ICA believes that several carriers including USTA and MCI would like to see their obligations confined mainly to the status quo. This result would not be acceptable to ICA's members.
5. The revised tariffs concerning liability for fraud should incorporate private dispute resolution practices including arbitration.

ICA also agrees that vendor-provided fraud protection and detection remedies should be made uniformly available to all types of service providers and market segments, as noted in the comments of the Telecommunications Resellers Association. ICA appreciates the stated willingness of some of the more foresightful telephone companies, like Bell Atlantic and BellSouth, to adopt procedures that would allocate fraud risks and responsibility better than the traditional tariff limitations. At present, however, ICA believes that potential carrier liabilities for fraud should not be limited only to situations where a user has purchased optional carrier fraud control products. While such products will play a growing role in the marketplace, the primary task before the Commission is to control the spread of fraudulent practices as best as possible, not to simply provide new revenue opportunities for carriers.

In conclusion, ICA reiterates that this is an important proceeding. In this area, and in other areas, the Commission should be prepared to recognize how its role is changing as telecommunications becomes more competitive. Where, as in the case of telecommunications fraud, new technologies and the

complexities of multi-vendor environments create problems that competition cannot yet solve, the Commission must be ready to step in and define new rules and practices. In this case the Commission's role will be best served by:


1. Adopting the rules and procedures in the Notice.
2. Acting expeditiously on the pending matter of international call blocking, as ICA and many other commentors have urged it to do.
3. Asserting appropriate federal jurisdiction in favor of more uniform rules in other areas like maintaining the 1+ toll dialing convention that can help prevent additional telecommunications fraud, as other parties have noted.

WHEREFORE, the International Communications Association respectfully requests that the Commission adopt the procedures discussed herein and in ICA's initial comments, to address the increasingly critical issue of telecommunications fraud.

Respectfully Submitted,

INTERNATIONAL COMMUNICATIONS ASSOCIATION

By



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CERTIFICATE OF SERVICE

I, Laura K. Higgins, hereby certify that a true and correct copy of the foregoing "Reply Comments of the International Communications Association" were mailed, first class, postage prepaid, this 10th day of January, 1994, to the following:

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